

*United States Court of Appeals
for the Second Circuit*



**BRIEF FOR
APPELLEE**

ORIGINAL

76-7338

United States Court of Appeals
For the Second Circuit

EDWARD M. ALEXANIAN.

Plaintiff-Appellant.

-against-

NEW YORK STATE URBAN DEVELOPMENT CORPORATION,
EDWARD LOGUE, ROBERT McCABE, JOHN BURNETT,
DAVID OZERKIS, JOSEPH FIOCCA, WILLIAM H. HAYDEN,
ROBERT G. HAZEN, ROBERT GERMANO, PHILIP
SALOMINE and THE CITY OF NEW YORK, SAM GANG,
JUDA DICK, TWO CITY POLICE CAPTAINS and, NEW YORK
STATE PARK COMMISSION FOR THE CITY OF NEW
YORK, HORN CONSTRUCTION CORP., BLANDFORD CO., &
OTHERS and, LEON D. DeMATTEIS & SONS, INC.,
ALPHONSE DeMATTEIS, ALLAN HOWARD, VINCENT J.
ARGIRO, NICHOLAS CAROZZA, COBRA PILE DRIVING
CORP., COPPOLA CONSTRUCTION CO., COPPOLA BROS',
ARCUS CONSTRUCTION CO., JAMES COPPOLA, DIC
CONCRETE CORP., DIC-UNDERHILL CO., NICHOLAS
FASSINI, CASTALDO CRANE CORP., PAGE FENCE CO.,
STAR CIRCLE CONSTRUCTION CO., TRANSIT MIX CORP.,
COLONIAL SAND AND GRAVEL CORP., PASCAP SCRAP
IRON CORP., BRONX IRON CORP., BROOKFIELD AUTO
WRECKERS CO., DEBEVOISE, PLIMPTON, LYONS & GATES,
STANDISH F. MEDINA, JR., JOSEPH H. SCHINABEL, LESLIE
H. GOLDENTHAL, CHARLES A. LORETO, UNDER-SHERIFF
OF BRONX COUNTY, WARDEN REINER, OF NEW YORK
COUNTY JAIL, GOVERNOR & LEGISLATORS OF THE
STATE OF NEW YORK and, several JOHN DOE
CORPORATIONS and ONE HUNDRED (100) OR MORE
INDIVIDUAL JOHN DOES,

Defendants-Appellees.

*On Appeal from the United States District Court
for the Southern District of New York*

BRIEF FOR DEFENDANT-APPELLEE
PASCAP CO., INC.

GLABMAN, RUBENSTEIN, REINB
REINGOLD & ROTHBART, P.C.
Attorneys for Appellee Pascap
32 Court Street
Brooklyn, N.Y. 11201

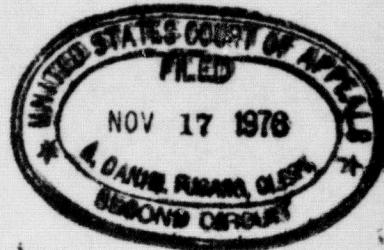


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWARD M. ALEXANIAN,

Plaintiff, :

-against- :

NEW YORK STATE URBAN DEVELOPMENT CORPORATION, EDWARD LOGUE, ROBERT McCABE, JOHN BURNETT, DAVID OZERKIS, JOSEPH FIOCCA, WILLIAM H. HAYDEN, ROBERT G. HAZEN, ROBERT GERMANO, PHILIP SALOMINE and THE CITY OF NEW YORK, SAM GANG, JUDA DICK, TWO CITY POLICE CAPTAINS and, NEW YORK STATE PARK COMMISSION FOR THE CITY OF NEW YORK, HORN CONSTRUCTION CORP., BLANDFORD CO., & OTHERS and, LEON D. DeMATTEIS & SONS, INC., ALPHONSE DeMATTEIS, ALLAN HOWARD, VINCENT J. ARGIRO, NICHOLAS CAROZZA, COBRA PILE DRIVING CORP., COPPOLA CONSTRUCTION CO., COPPOLA BROS., ARCUS CONSTRUCTION CO., JAMES COPPOLA, DIC CONCRETE CORP., DIC-UNDERHILL CO., NICHOLAS FASSINI, CASTALDO CRANE CORP., PAGE FENCE CO., STAR CIRCLE CONSTRUCTION CO., TRANSIT MIX CORP., COLONIAL SAND AND GRAVEL CORP., PASCAP SCRAP IRON CORP., BRONX IRON CORP., BROOKFIELD AUTO WRACKERS CO., DEBEVOISE, PLIMPTON, LYONS & GATES STANDISH F. MEDINA, JR., JOSEPH H. SCHNABEL, LESLIE H. GOLDENTHAL, CHARLES A. LORETO, UNDER-SHERIFF OF BRONX COUNTY, WARDEN REINER, OF NEW YORK COUNTY JAIL, GOVERNOR & LEGISLATORS OF THE STATE OF NEW YORK and, several JOHN DOE CORPORATIONS and ONE HUNDRED (100) OR MORE INDIVIDUAL JOHN DOES.

Defendants. :

PRELIMINARY STATEMENT

75 Civ. 6340

Decision by Kevin Thomas Duffy, D.J.: Dated June 18, 1976
is as follows:

"Various motions have been made to dismiss the complaint herein. I have spent many hours reviewing the 293 paragraphs document entitled "Complaint", particularly with a view to interpreting it in the most favorable light since the plaintiff is appearing pro se. It now appears clear to me that the allegations do not make out any justiciable cause of action.

The action is dismissed.

SO ORDERED."

ISSUES PRESENTED

1. Is there a justiciable cause of action?
2. Did Pascap Co., Inc., answer comply with
FRCP Rule 4(b) and was its motion proper?

NATURE OF THE CASE

Plaintiff appeals from a decision of the District Court dismissing the complaint for failing to make out any justiciable cause of action.

COURSE OF THE PROCEEDINGS

Summons and Complaint served on Pascap Co., Inc., sued incorrectly as Pascap Scrap Iron Corp., on or about April 9, 1976.

Motion by co-defendant to extend time of all defendants to answer to May 31, 1976, granted.

Pascap Co., Inc., answer served May 28, 1976.

Motion to dismiss the complaint granted on June 18, 1976.

FACTS AND ARGUMENT

Pursuant to FRAP 28(c) the brief of Debevoise, Plimpton, Lyons & Gates, is hereby adopted and made a part hereof.

We agree that Judge Duffy was correct and there is no justiciable cause of action.

We also agree with the information and arguments set forth in the above mentioned brief.

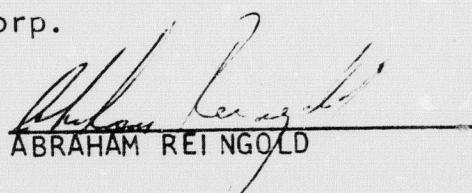
Besides the fact that the complaint is vague and unintelligible in part, three things seem clear:

First, there is no diversity of citizenship;

Second, an allegation of conversion of property is not a federal question;

Third, an examination of the courts records will reveal that the answer of Pascap Co., Inc., complies with FRCP Rule 4(b) and that its motion was, and is proper.

WHEREFORE, I respectfully request the Court to dismiss the appeal as to the defendant Pascap Co., Inc., sued herein as Pascap Scrap Iron Corp.


ABRAHAM REINGOLD

Sworn to before me this

15 day of November, 1976.



Notary Public

HAROLD ROSENBLATT
Notary Public, State of New York
No. 24 3353675
Qualified in Kings County
Commission Expires March 30, 1979

GLABMAN

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 17 day of Nov. 1976 deponent served the within Brief upon

Mele & Culien, Esqs.;
Fredericks & Goldberger, Esqs.;
Hon. Louis J. Lefkowitz, Attorney General;
Barrett, Smith, Shapiro & Simon, Esqs.;
Hon. W. Bernard Richland, Corporation Counsel;
Gatzzo, Silag, Craner, Perelson, Esqs.

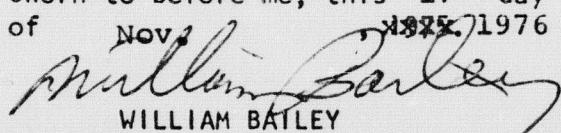
~~DeBevoise, Plimpton, Lyons & Gates, Esqs.~~
DeBevoise, Plimpton, Lyons & Gates, Esqs.
Edward Alexanian, Esq.

attorneys for Appellants
in this action, at 150 William St., NYC;
175 Main St., White Plains, NY;
2 World Trade Cetern, NYC;
26 Broadway, NYC;
Municipal Building, NYC
888 Seventh Ave., NYC
299 Park Ave., NYC and c/o Mrs. Jane Tieboat Ave., Bronx, N.Y.
the address(es) designated by said attorney(s) for that purpose by depositing

5 copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 17 day
of Nov. 1976


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978